

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**WAUNITA SMITH**

Claimant

VS.

**ROSSVILLE VALLEY MANOR**

Respondent

AND

**LEGION INSURANCE CO.**

Insurance Carrier

Docket No. 268,256

**ORDER**

Respondent requests review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on February 21, 2002.

**ISSUES**

The Administrative Law Judge ordered respondent and its insurance carrier, Legion Insurance Company, to provide claimant medical treatment with Glenn M. Amundson, M.D.

The respondent and its insurance carrier, Legion Insurance Company, applied for review and alleged the Administrative Law Judge erred in failing to designate a date of accident in his Order. It is further argued the Administrative Law Judge erred by designating a treating physician when claimant was already receiving treatment for a subsequent injury. However, it is clear from the arguments at preliminary hearing that respondent and its insurance carrier, Legion, were alleging the need for treatment was related to a subsequent accident claimant suffered while working for respondent.

The claimant contends the respondent has not raised an issue subject to review by the Board from a preliminary hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant alleged dates of injury on April 20, 2001, and June 14, 2001. It was not disputed that she suffered injuries while working for respondent on those dates. Claimant had been provided treatment and was on light-duty work. Respondent had referred claimant for additional medical opinions after the treating physician recommended surgery.

Claimant suffered an additional injury on January 3, 2002, while performing the light-duty work for respondent and was taken off work for treatment. Respondent had changed insurance carriers and Legion Insurance Company argues the claimant's current need for treatment is related to the subsequent injury and should be the responsibility of the respondent's current workers compensation insurance carrier.

The arguments presented raise the issue which of respondent's two insurance carriers should pay for the benefits ordered. The Administrative Law Judge ordered Legion Insurance Company to pay because claimant's initial injuries occurred, her condition was diagnosed, and surgery was recommended as a result of the accidents during Legion's coverage. Legion's argument of a permanent worsening of claimant's condition on January 3, 2002, after its coverage ended, was rejected based on the medical evidence provided at the preliminary hearing. Legion does not argue that claimant's injury is not compensable.

Not every alleged error in law or in fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:<sup>1</sup>

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction.<sup>2</sup>

Date of accident for apportioning liability between an employer's insurance carriers is not one of the jurisdictional issues listed above, nor was it necessary to determine the date of accident in order to decide any of the jurisdictional issues.

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<sup>1</sup>K.S.A. 44-534a(a)(2).

<sup>2</sup>K.S.A. 44-551(b)(2)(A).

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

A contention that the Administrative Law Judge has erred in his finding that the evidence shows a need for medical treatment to relieve the claimant from the effects of one or another or more than one injury that claimant sustained while working for the same employer is not an argument the Board has the jurisdiction to consider on an appeal from an order entered pursuant to K.S.A. 44-534a.

The arguments pertain to what date of accident should control for purposes of determining which insurance carrier is liable. This does not give rise to a disputed issue of whether claimant's injury occurred as a result of an accident which arose out of and in the course of claimant's employment with respondent. Regardless of which date of accident (or accidents) is found to be the precipitating cause for claimant's medical treatment, it does not alter the fact that the injury (or injuries) is the result of claimant's employment with respondent. That fact appears to be undisputed.

The Board concludes that when date of accident is an issue only because it pertains to which insurance carrier is responsible for providing preliminary hearing benefits, that finding is not appealable from a preliminary hearing order. Therefore, this appeal should be dismissed.

Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established.<sup>4</sup>

### **AWARD**

**WHEREFORE**, the Board dismisses the appeal, leaving the February 21, 2002, preliminary hearing Order in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2002.

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<sup>3</sup>*Allen v. Craig*, 1 Kan. App.2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>4</sup>*Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Hobelman v. Krebs Construction Co.*, 188 Kan. 825, 366 P.2d 270 (1961).

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BOARD MEMBER

- c:     Roger D. Fincher, Attorney for Claimant  
       J. Scott Gordon, Attorney for Respondent  
       Bryce D. Benedict, Administrative Law Judge  
       Philip S. Harness, Workers Compensation Director